# Rule Util and Governance DA

The strategy here was rule util + following the constitution/judicial legitimacy is the best rule. A lot of the impacts to judicial legitimacy or constitution are from backfiles, but all the extensions/weighing we wrote ourselves.

## Rule util FW

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#### The standard is consistency with rules that maximize expected net benefits.

#### 1. Intuitions are key-

#### All ethical theories are based on intuitions – even modus ponens, or p leads to q, is an intuition, since there is no way to warrant it so we just accept it – if all moral theories are necessarily based on intuitions, moral theories have to be consistent with intuitions

#### Probability – the simplest framework is the most likely to be true since making additional assumptions increases the likelihood that the whole theory is flawed since only one assumption needs to be false for the whole theory to be false

#### Rule-util coheres with intuitions

Hooker [Brad Hooker. Philosophy Professor at the University of Reading. “Ideal Code, Real World: A Rule-Consequentialist Theory of Morality.” 2000]

Does rule-consequentialism accord with the convictions we share about moral permissibility and requirement? Rule-consequentialism selects rules on the basis of expected value, impartially calculated. Thus the theory is clearly impartial at the level of rule selection. As I shall argue later, the impartial assessment of rules will favour rules that (a) allow partiality, within limits, towards self and (b) require partiality, within limits, towards family, friends, etc. This partiality towards self and loved ones will then be allowed to guide a great number of people’s day to day decisions (not all, of course). Therefore, while rule-consequentialism is purely impartial at the foundational level where a code is selected, the code thus selected makes demands on action that are moderate and intuitively plausible. Rule-consequentialism is fundamentally impartial, but not implausibly demanding. Rule-consequentialism also accords with common moral beliefs about what we are prohibited from doing to others. As I observed, most of us believe morality prohibits physically attacking innocent people, taking or harming the possessions of others, breaking our promises, telling lies, and so on. Rule-consequentialism endorses prohibitions on these kinds of act, since on the whole, the consequences, considered impartially, will be far better is such prohibitions are widely accepted. (In Chapter 6, I argue that rule consequentialism’s implications concerning prohibitions and special duties are plausible.)

#### 2. [insert other util warrants]

## Constitution DA

### 1NC

#### Chilling effect kills free speech

Bolton 14 [(Robert, Pierpont Community & Technical College) “The Right to Be Forgotten: Forced Amnesia in a Technological Age” John Marshall Journal of Computer & Information Law, Forthcoming Oct 15] AT

The previous hypotheticals lead to perhaps the most contentious talking point over the right to be forgotten: free speech. No one disputes privacy has significant benefits.55 However, in an age when newspapers frequently incorporate tweets and other public comments by prominent citizens, embracing a right to be forgotten could severely limit a journalist’s ability to perform their job effectively. Indeed, in recent years the actions of public officials over digital forums have led to important debates amongst the electorate that might otherwise have been prevented had such a right to be forgotten been created.56 The Supreme Court has long held that information acquired legally, even if distasteful, has a right to be disseminated if true.57 Some Justices like Hugo Black rejected altogether the notion of right to privacy or suits for defamation when distributing unflattering materials.58 Even for those favoring a more moderate tone, a number of prominent First Amendment scholars have stated the current case law weighs heavily against the constitutionality of many right to be forgotten statutes.59 If one could be crafted that is legally permissible, it could have unforeseen consequences and a chilling effect 60 harmful to a democratic society that places a high value on the marketplace of ideas.61 If information relevant to a legitimate political or social debate is barred from being accessed by others, it limits the ability of citizens to create informed opinions.

#### Results in rollbacks – Court challenges would lead to repeal of the law, so no aff solvency

#### Constitutionality is key to credibility – violating the constitution proves that we’re not trustworthy.

Tom Ginsburg 6 (Professor of Law and Political Science, University of Illinois, Urbana-Champaign). “LOCKING IN DEMOCRACY: CONSTITUTIONS, COMMITMENT, AND INTERNATIONAL LAW.” 2006. http://works.bepress.com/tom\_ginsburg/12/

Why might these issues of constitutional design vary across countries? I draw on the literature that treats constitutions as mechanisms for making political precommitments.56 A precommitment means “becoming committed, bound or obligated to some course of action or inaction or to some constraint on future action . . . to influence someone else’s choices.”57 Imagine a constitution written by a single political leader, seeking to establish legitimate authority. The politician can promise to behave in particular ways, for example, not to interfere with the rights of his or her citizens. But there is no reason for citizens to believe mere promises from their leader. A promise at Time 1 only has value if the promisee believes that it will be obeyed at Time 2. The politician thus faces the problem of making the promise credible. This problem is particularly acute when the politician cannot predict the incentives he or she will face in the future.58 If costs and benefits vary in unpredictable ways, the politician’s promise to behave in the specified way may be less believable. To paraphrase Stephen Holmes, why should people believe their leader when sober, knowing that sometimes leaders can become drunk and behave quite differently?59 Facing this problem, a rational constitutional designer might realize that it makes sense to limit her own power, in order to obtain the consent of those she governs. Democratic constitutions can help to serve this role. As Sunstein has written: “Democratic constitutions operate as ‘precommitment strategies’ in which nations, aware of problems that are likely to arise, take steps to ensure that those problems will not arise or that they will produce minimal damage if they do.”60 Constitutions help make the promises credible by imposing costs on those who violate promises.61 By tying their own hands, politicians actually can enhance their own authority.

#### International credibility solves multiple scenarios for extinction.

Nye and Armitage 07 [Joseph Nye (University Distinguished Service Professor at Harvard University, and previous dean of Harvard University's John F. Kennedy School of Government) and Richard Armitage (13th United States Deputy Secretary of State, the second-in-command at the State Department, serving from 2001 to 2005), “CSIS Reports – A Smarter, More Secure America”, 11/6, 2007 http://www.csis.org/component/option,com\_csis\_pubs/task,view/id,4156/type,1/]

Soft power is the ability to attract people to our side without coercion. Legitimacy is central to soft power. If a people or nation believes American objectives to be legitimate, we are more likely to persuade them to follow our lead without using threats and bribes. Legitimacy can also reduce opposition to—and the costs of—using hard power when the situation demands. Appealing to others’ values, interests, and preferences can, in certain circumstances, replace the dependence on carrots and sticks. Cooperation is always a matter of degree, and it is profoundly influenced by attraction…The information age has heightened political consciousness, but also made political groupings less cohesive. Small, adaptable, transnational networks have access to tools of destruction that are increasingly cheap, easy to conceal, and more readily available. Although the integration of the global economy has brought tremendous benefits, threats such as pandemic disease and the collapse of financial markets are more distributed and more likely to arise without warning. The threat of widespread physical harm to the planet posed by nuclear catastrophe has existed for half a century, though the realization of the threat will become more likely as the number of nuclear weapons states increases. The potential security challenges posed by climate change raise the possibility of an entirely new set of threats for the United States to consider… States and non-state actors who improve their ability to draw in allies will gain competitive advantages in today’s environment. Those who alienate potential friends will stand at greater risk. China has invested in its soft power to ensure access to resources and to ensure against efforts to undermine its military modernization. Terrorists depend on their ability to attract support from the crowd at least as much as their ability to destroy the enemy’s will to fight.

### A2 Privacy Turn

#### Privacy rights don’t apply to the plan – court cases confirm

Bolton 14 [(Robert, Pierpont Community & Technical College) “The Right to Be Forgotten: Forced Amnesia in a Technological Age” John Marshall Journal of Computer & Information Law, Forthcoming Oct 15] AT

Across the Atlantic, however, the United States has always possessed a much more limited concept of privacy.24 Although the Fourth Amendment recognizes a right to privacy (or at least sanctuary of the home) through its requirement of a warrant for searches & seizures,25 the restrictions of the Constitution have repeatedly been held inapplicable to private parties absent government cooperation.26 Furthermore, it was not until the mid-1960s that privacy was recognized among the penumbra of civil rights protected under the Ninth Amendment.27 Interestingly, the article that originally spurred a revision of constitutional law on the matter concerned itself with tort actions. Chastened by their own prior experiences with the press, Louis Brandeis and Samuel Warren’s article “The Right to Privacy”28 noted in the article's first paragraph, "That the individual shall have full protection in person and in property is a principle as old as the common law; but it has been found necessary from time to time to define anew the exact nature and extent of such protection."29 They then proceeded to call for the creation of a tort action for wrongs like, amongst other things, the circulation of unauthorized pictures of private persons.30

### More link ev

#### The plan is not constitutional

Fisher 14 [(Daniel, Forbes Staff, I cover finance, the law, and how the two interact) “Europe's `Right To Be Forgotten' Clashes With U.S. Right To Know” Forbes 5/16] AT

The decision treats search engines like publishers, with the power to pick and choose what other people can see when they type in an individual’s name. That conflicts directly with U.S. law, which protects the free flow of information through the First Amendment and relies upon tort law, primarily libel and invasion of privacy, to protect individuals. Search engines and Internet providers in the U.S. are generally protected from liability for passing on data unless they have direct knowledge it is false or violates copyright law. (Though Google, like most search operators, has mechanisms for requesting takedowns of copyrighted or private material.) It’s ironic that the flashpoint is the “right to be forgotten,” since the U.S. for most of its existence has been a place where people come to put the past behind them. The country’s strong protections against political persecution and liberal bankruptcy laws to allow them to escape crushing debts both served as powerful magnets for immigrants seeking escape. How, then, could the U.S. get so far out of whack with Europe on personal privacy? Europe has long had a much different conception of privacy and how to protect it. The EU court technically was enforcing a 1995 EU directive on privacy that treats search engines as data “collectors” subject to regulation. But the decision has its roots in the older French concept of droit à l’oubli, or the right to oblivion. As this useful article by Internet-privacy experts Meg Leta Amrose and Jeff Ausloos explains, EU regulators have long been more concerned than their U.S. counterparts about personal privacy and the role of government in enforcing it. The European Convention on Human Rights, adopted in 1953, explicitly introduced the right to “respect for private and family life.” A 1981 provision specifically targets the automatic processing of data and the European Commission declared the right to be forgotten a a pillar of the Data Protection Regulation in 2010. So the EU court’s decision shouldn’t have come as such a surprise to Google, given the explicit language that preceded it. That decision requires Google to take down data that are “inadequate, irrelevant or no longer relevant, or excessive in relation to the purposes for which they were processed and in the light of the time that has elapsed.” This mirrors existing EU regulations prohibiting companies from holding personal data for an unreasonable time. In this case it was articles about the the 1998 repossession of a Spanish man’s home. But the decision could result in large swaths of currently public information being removed from the view of European Internet users, although how Google, Yahoo and other search engines will accomplish this — or how consistently the 28 member countries will enforce the decision – is still unknown. Will it create yet another World Wide Web, censored, like in China, to protect users from knowing too much? Or will it prove unworkable, as did Europe’s generally toothless regulations on the long-term storage of personal data? Privacy isn’t the only area where European and U.S. views toward individual rights diverge. European law is more protective of individual creative rights, in a way that might strike Americans as paternalistic or interfering with other fundamental rights like property and the right of contract. In Europe, artists possess inalienable “moral rights” — based again on the French “droit moral” — over their creations that supersede copyright and allows them to prevent alterations that they think would show them in a bad light. In the U.S., artists can sell their works to the highest bidder with no strings attached, as many novelists have learned to their horror after watching their works translated into Hollywood films. The right to be forgotten reflects a similar concern with how individuals are viewed by the rest of the world. It is to a large extent based on the right to have only correct information about oneself available to the public. Most Americans would understand that, in the context of requiring credit reporting agencies to delete incorrect records of unpaid debts, for example.

## Precedent-setting DA

### 1NC Precedent Setting Core

#### The plan conflicts with free speech doctrine

Fisher 14 [(Daniel, Forbes Staff, I cover finance, the law, and how the two interact) “Europe's `Right To Be Forgotten' Clashes With U.S. Right To Know” Forbes 5/16] AT

The decision treats search engines like publishers, with the power to pick and choose what other people can see when they type in an individual’s name. That conflicts directly with U.S. law, which protects the free flow of information through the First Amendment and relies upon tort law, primarily libel and invasion of privacy, to protect individuals. Search engines and Internet providers in the U.S. are generally protected from liability for passing on data unless they have direct knowledge it is false or violates copyright law. (Though Google, like most search operators, has mechanisms for requesting takedowns of copyrighted or private material.) It’s ironic that the flashpoint is the “right to be forgotten,” since the U.S. for most of its existence has been a place where people come to put the past behind them. The country’s strong protections against political persecution and liberal bankruptcy laws to allow them to escape crushing debts both served as powerful magnets for immigrants seeking escape. How, then, could the U.S. get so far out of whack with Europe on personal privacy? Europe has long had a much different conception of privacy and how to protect it. The EU court technically was enforcing a 1995 EU directive on privacy that treats search engines as data “collectors” subject to regulation. But the decision has its roots in the older French concept of droit à l’oubli, or the right to oblivion. As this useful article by Internet-privacy experts Meg Leta Amrose and Jeff Ausloos explains, EU regulators have long been more concerned than their U.S. counterparts about personal privacy and the role of government in enforcing it. The European Convention on Human Rights, adopted in 1953, explicitly introduced the right to “respect for private and family life.” A 1981 provision specifically targets the automatic processing of data and the European Commission declared the right to be forgotten a a pillar of the Data Protection Regulation in 2010. So the EU court’s decision shouldn’t have come as such a surprise to Google, given the explicit language that preceded it. That decision requires Google to take down data that are “inadequate, irrelevant or no longer relevant, or excessive in relation to the purposes for which they were processed and in the light of the time that has elapsed.” This mirrors existing EU regulations prohibiting companies from holding personal data for an unreasonable time. In this case it was articles about the the 1998 repossession of a Spanish man’s home. But the decision could result in large swaths of currently public information being removed from the view of European Internet users, although how Google, Yahoo and other search engines will accomplish this — or how consistently the 28 member countries will enforce the decision – is still unknown. Will it create yet another World Wide Web, censored, like in China, to protect users from knowing too much? Or will it prove unworkable, as did Europe’s generally toothless regulations on the long-term storage of personal data? Privacy isn’t the only area where European and U.S. views toward individual rights diverge. European law is more protective of individual creative rights, in a way that might strike Americans as paternalistic or interfering with other fundamental rights like property and the right of contract. In Europe, artists possess inalienable “moral rights” — based again on the French “droit moral” — over their creations that supersede copyright and allows them to prevent alterations that they think would show them in a bad light. In the U.S., artists can sell their works to the highest bidder with no strings attached, as many novelists have learned to their horror after watching their works translated into Hollywood films. The right to be forgotten reflects a similar concern with how individuals are viewed by the rest of the world. It is to a large extent based on the right to have only correct information about oneself available to the public. Most Americans would understand that, in the context of requiring credit reporting agencies to delete incorrect records of unpaid debts, for example.

#### Multiple precedents rule in favor of free speech. The aff overrules centuries of precedent.

Walker 12 [Robert Kirk Walker, J.D. Candidate at University of California, Hastings College of the Law. “The Right to Be Forgotten,” ] **AZ**

At first blush, the tort of public disclosure of a private fact seems viable as a remedy to unwanted dissemination of personal information, but American courts have consistently found that rights of freedom of speech, particularly those of the press, often trump privacy rights and preclude recovery.[[1]](#footnote-1) When tort injury conflicts with free speech, the latter must win because, “in public debate [we] must tolerate insulting, and even outrageous, speech in order to provide adequate ‘breathing space’ to the freedoms protected by the First Amendment.”[[2]](#footnote-2) The desiccation of the tort of public disclosure came under the heat of three Supreme Court cases: Cox Broadcasting v. Cohn,[[3]](#footnote-3) Smith v. Daily Mail Publishing,[[4]](#footnote-4) and Florida Star v. B.J.F.[[5]](#footnote-5) In Cox Broadcasting, the Court considered whether the father of a deceased rape victim was entitled to damages from a broadcast television station that had identified the victim by name during coverage of her alleged rapist’s trial.[[6]](#footnote-6) The Court found for the station.[[7]](#footnote-7) After reviewing the arguments put forward in The Right to Privacy, as well as the privacy torts contained in the Restatement,[[8]](#footnote-8) the Court concluded that, “even the prevailing law of invasion of privacy generally recognizes that the interests in privacy fade when the information involved already appears on the public record.”[[9]](#footnote-9) The Court, however, avoided the issue of whether a state could define certain private activities and information as off-limits from the press, and instead narrowed its holding to exempt from liability only the truthful publication of names obtained from public court records.[[10]](#footnote-10) Two years later, in Oklahoma Publishing Co. v. District Court ex rel. Oklahoma County, the Court affirmed Cox Broadcasting and held that a newspaper company could not be held liable for publishing the events of a closed-door juvenile proceeding because the sitting judge allowed media into the courtroom.[[11]](#footnote-11) Then in Daily Mail, the Court suggested in dicta that all truthful publications made by the press are protected under the First Amendment, so long as the information was obtained from a lawful source.[[12]](#footnote-12) After reviewing its holdings in Cox Broadcasting, the Court said that “if a newspaper lawfully obtains truthful information about a matter of public significance then state officials may not constitutionally punish publication of the information, absent a need to further a state interest of the highest order.”[[13]](#footnote-13) Finally, in Florida Star, the Court held that “where a newspaper publishes truthful information which it has lawfully obtained, punishment may lawfully be imposed, if at all, only when narrowly tailored to a state interest of the highest order.”[[14]](#footnote-14) In dissent, Justice White argued that allowing a state to penalize the publication of truthful information only when “a state interest of the highest order” was involved effectively “obliterate[s] one of the most noteworthy legal inventions of the 20th century: the tort of the publication of private facts.”[[15]](#footnote-15) Therefore, in light of the Court’s view that the First Amendment guarantees the media a nearly unlimited right to publish truthful information, many scholars have questioned whether the tort of public disclosure is still valid:[[16]](#footnote-16) [T]he tort’s use is limited to cases in which the press publishes information that was unlawfully obtained and wholly unrelated to a matter of public significance. . . . Given the narrow class of information that fulfills the Florida Star requirements, the tort can no longer be an effective tool for protecting individual privacy.[[17]](#footnote-17) Thus, because of the public disclosure tort’s tenuous constitutional status and the broad range of activities that qualify as protected speech, there seems little merit to using the tort as a basis for enforcing online privacy rights.

### Free Speech Impact

#### Only *strong precedent* can check aggression

Blasi 85 - Vincent Blasi, Professor of Civil Liberties, Columbia University. Columbia Law Review, APRIL, 1985. 85 Colum. L. Rev. 449. “THE PATHOLOGICAL PERSPECTIVE AND THE FIRST AMENDMENT.”

There is reason to believe that susceptibility to pathological challenge is especially characteristic of the central constitutional norms regarding free expression and inquiry. Most constitutional commitments are fragile in the sense that they embody ideals that are easily abandoned or tempered in times of stress. Certain distinctive features of the commitment to free speech enhance that fragility. The aggressive impulse to be intolerant of others resides within all of us. It is a powerful instinct. Only the most sustained socialization -one might even say indoctrination in the value of free speech keeps the urge to suppress dissent under control. 9 When the constraints imposed by that socialization lose their effectiveness, as most social constraints intermittently do, the power of the instinct toward intolerance usually generates a highly charged collective mentality. Because the instinct to suppress dissent is basic, primitive, and aggressive, it tends to have great momentum when it breaks loose from the shackles of social constraint. Aggression is contagious, and hatred of strangers for what they believe is one of the safest and most convenient forms of aggression. The problem is compounded by the fact that the suppression of dissent ordinarily is undertaken in the guise of political affirmation, of insisting that everyone stand up and be counted in favor of the supposed true values of the political community. As such, this particular type of challenge to constitutional liberties can take on the character of a mass movement; it can engage the imagination of the man on the street. It would be a great mistake, moreover, to assume that pathologies regarding the liberties of expression and inquiry constitute mere passing tempests, rough and unsettling at the time but of only limited significance in the long run. Some historians believe that the Red Scare was a factor in the precipitous collapse during the 1920s of the once potent Socialist movement in the United States. 10 The State Department's corps of experienced specialists on the Far East was decimated as a result of firings and forced resignations during the McCarthy Era; [\*458] miscalculations in American policy toward Vietnam have been attributed to that loss of expertise. 11 The Hollywood Blacklist struggle of 1947-1953 left a residue of broken careers, expatriate talents, and extreme reluctance on the part of film studios to address controversial subjects or portray social conditions of potential political significance. 12 The character of the trade union movement was permanently altered by the expulsion during the anti-Communist purges of the 1950s of some of its most skillful, uncompromising, and incorruptible leaders. 13 Pathological periods tend to be short-lived, but their consequences linger on. So far I have argued that the central norms of the constitutional tradition, which are normally immune from serious challenge both in political debate and adjudication, tend to be placed in jeopardy during pathological periods. That claim still does not establish that adjudication in ordinary times should be heavily influenced by the goal of strengthening the central norms of the first amendment tradition against the possibility of pathological challenges. Even if the most serious challenges to those norms tend to be concentrated in pathological periods, it may be that the best way to fortify a constitutional regime against pathological challenge is to develop a strong tradition of adjudication geared to normal times.

#### Free speech checks war and terrorism

D’Souza 96 - Frances D'Souza, Executive Director of Article 19, the International Centre Against Censorship. Public Hearing Committee on Foreign Affairs, Security and Defence Policy Subcommittee on Human Rights Brussels, 25 April 1996. “Freedom of Expression: The First Freedom?” Article 19, International Centre Against Censorship. http://www.europarl.europa.eu/hearings/19960425/droi/freedom\_en.htm

There are undoubted connections between access to information, or rather the lack of it, and war, as indeed there are between poverty, the right to freedom of expression and development. One can argue that democracy aims to increase participation in political and other decision-making at all levels. In this sense democracy empowers people. The poor are denied access to information on decisions which deeply affect their lives, are thus powerless and have no voice; the poor are not able to have influence over their own lives, let alone other aspect of society. Because of this essential powerlessness, the poor are unable to influence the ruling elite in whose interests it may be to initiate conflict and wars in order to consolidate their own power and position. Of the 126 developing countries listed in the 1993 Human Development Report, war was ongoing in 30 countries and severe civil conflict in a further 33 countries. Of the total 63 countries in conflict, 55 are towards the bottom scale of the human development index which is an indicator of poverty. There seems to be no doubt that there is a clear association between poverty and war. It is reasonably safe to assume that the vast majority of people do not ever welcome war. They are normally coerced, more often than not by propaganda, into fear, extreme nationalist sentiments and war by their governments. If the majority of people had a democratic voice they would undoubtedly object to war. But voices are silenced. Thus, the freedom to express one's views and to challenge government decisions and to insist upon political rather than violent solutions, are necessary aspects of democracy which can, and do, avert war. Government sponsored propaganda in Rwanda, as in former Yugoslavia, succeeded because there weren't the means to challenge it. One has therefore to conclude that it is impossible for a particular government to wage war in the absence of a compliant media willing to indulge in government propaganda. This is because the government needs civilians to fight wars for them and also because the media is needed to re-inforce government policies and intentions at every turn. In a totalitarian state where the expression of political views, let alone the possibility of political organis-ation, is strenuously suppressed, one has to ask what other options are open to a genuine political movement intent on introducing justice. All too often the only perceived option is terrorist attack and violence because it is, quite literally, the only method available to communicate the need for change.

### ---Science Impact

#### Free speech is key to scientific inquiry which solves multiple scenarios for extinction

Regev 6 - Hanna Regev, Board Member of the First Amendment Project and Consultant with African American Museum, “The Science of Silence”, March 6, 2006, http://www.thefirstamendment.org/blog/2006/03/science-of-silence.html

Who would have thought that NASA, the crown jewel of governmental agencies, would be disgraced and come under severe attacks because of its scientific endeavors? Since its inception in 1958, NASA logged many scientific and technological feats in air and space. It sent 12 men to the Moon and now it takes images of Saturn and its moons. This noble institution has become the latest victim of a morally corrupt government. Dr. James E. Hansen, the NASA climate scientist who sparked uproar last month by accusing the Bush administration of keeping scientific information from reaching the public, said that officials at the National Oceanic and Atmospheric Administration (NOAA) are also muzzling researchers who study global warming. "It seems more like Nazi Germany or the Soviet Union than the United States," said Hansen. The Bush government policy of silencing researchers and altering scientific inquiry to pacify ideologues from the far right wing of the Republican Party is a disturbing trend and has reached a level not previously seen in this country. Alarmed by the persistent and sustained effort of the administration to grab power, disregard the US Constitution, suppress freedom of expression at all levels has led some sixty scientists, including 20 Nobel laureates and medical experts to release a statement on February 18 that accuses the Bush Administration of deliberately distorting scientific fact "for partisan political ends." FAP supports a scientist’s right to communicate and disseminate his or her research findings. This is a form of speech that is no less privy to the protections of the First Amendment than any other type of expression. The disclosures about NASA’s and NOAA’s ordeal with censorship are of great concern to FAP because they represent erosion of constitutional rights to freedom of speech, inquiry and exchange of ideas. It adds another area of censorship to an already packed caseload that until now was reserved to art and politics. Importantly, Hansen’s public complaint of censorship practices in NASA comes at a time that our world is experiencing serious problems such as exponential population growth, environmental pollution, impending energy shortages, nuclear proliferation, and climatic change. Why is this government engaged in a “culture war” over climate change? Weren’t the scientific institutions set up to discover new sources of energy and find a silver bullet to eradicate cancer? What if researchers were to discover that stem cells help repair cancerous tissues? After all, climate change and air pollution are by their very nature apolitical. Does the Bush administration ignore or deny mainstream research to please its conservative base? Have business groups and certain religious lobbies helped it do so? Answers to these questions and other pertinent topics are detailed and discussed in, The Republican War on Science by Chris Mooney’s, a former American Prospect writer. http://www.waronscience.com/author.php http://www.waronscience.com/buy.php As a super power and proclaimed leader of the free world, the destruction of scientific free inquiry poses a real threat to our national security and dominance. We have become vulnerable and prey to misguided ideologues. Furthermore, we are on a verge of loosing our constitutional rights and guaranteed freedoms. The bullying of our brightest scientists at present reminds me of the1950s when the political scene was dominated by a fear of communist expansion and influence. The fear was manipulated and exploited by Senator Joseph R. McCarthy, a politician from Wisconsin. The same manipulations and fear tactics are once again evoked in the combat of global terrorism; however, they have become a much more insidious arsenal at the disposal of this president and his cohorts. Distorting data for ideological purposes has been done before. Acts of censorship and the intruding government practices into the work of scientists is not new either. However, the damage this time and the blatant acts are far-reaching. The Bush Administration -along with hired guns and conservative think tanks -are engaged in smear campaigns and suppress science that is arguably unmatched in the Western world since the heliocentrist Giordano Bruno was burned alive in 1600 for the crime of sound science. (http://www.ncac.org/science/) It might be a total shock to learn that Nazis policy was actually in support of science and medicine and by doing so it minimized resistance coming from the intellectual and scientific community. Robert N. Proctor in the Racial Hygiene: Medicine Under the Nazis dispelled the myths and misconceptions following the end of WWII about Hitler’s irrational regime that destroyed science. On the contrary, Proctor’s definitive study claims that many scientists and physicians embraced the Reich, and that many scientific disciplines actually flourished under the Nazis. Their scientists and engineers developed a V-2 engine, greatly improved television, jet-propelled aircraft (including the ejection seat), guided missiles, electronic computers, the electron microscope, atomic fission, data-processing technologies, pesticides, and, of course, the world's first industrial murder complexes. The first magnetic tape recording was of a speech by Hitler, and the nerve gases Sarin and Tabun were Nazi inventions. Perhaps the Bush Administration can draw some lessons from the Nazi experience and restore respectability to our patriotic scientists. In the true spirit of scientific inquiry, the debate of climate warming and other scientific endeavors should be open to believers and non-believers, democrats and republicans. Climate change, the environment, contraception and abstinence education, stem cell research, missile defense, energy sources and evolution have no political agenda. Censorship and suppression of scientific inquiry must be regarded as threats to our national security and economy. Some of the cool heads in Washington must prevail and realize that censoring science won’t make this country safer.

### Judicial legitimacy---top level

#### Overrules hurt court legitimacy – perception is key

Idleman 95 (Scott, Assistant professor at Marquette Law, ARTICLE: A Prudential Theory of Judicial Candor, Texas Law Review, May 1995, 73 Tex. L. Rev. 1307, lexis)

The third and final competing value under the heading of institutional legitimacy is continuity, which is often perceived to be positively correlated with the professed adherence to precedent. n293 Yet, as David Shapiro [\*1393] notes, in an analysis of this argument, "[a] certain amount of conscious dissembling, it is sometimes suggested, is [itself] an appropriate, even a necessary, way of maintaining a sense of our connection with the past." n294 Consider, for example, the judicial treatment of prior cases that, for whatever reason, stand in the way of a doctrine or policy that a court now wishes to advance. The purist would likely recommend that the court employ full candor, denouncing the precedents as wrongly decided or no longer applicable and articulating the new doctrine in their place. According to this view, legitimacy inheres in honesty and forthrightness, and courts in the long run would be better off simply to overrule cases and abandon doctrine whenever and at whatever frequency they deem appropriate. In addition to facing several problems noted earlier, n295 however, this approach plainly ignores the legitimacy that attaches to a jurisprudence of consistency, even if that consistency is more apparent than real. While it may be true that legitimacy attaches to honesty and confidence in one's present actions, the explicit rejection of prior cases necessarily brings with it the strong implication that the prior court committed some form of error, and error -no matter how honestly it is conceded -is generally not the precursor to institutional legitimacy. In his study of the evolution of free speech doctrine, for example, David Cole has argued that, on the whole, our legal culture actually seems to prefer continuity of case law -what he calls the "misreading" of precedent -to sudden doctrinal shifts, and that some of our most celebrated judges are also some of our most adventuresome misreaders. n296 According to Cole: The specific character of legal misreading suggests that as a matter of ideology, we assign more importance to legitimacy than to greatness, even as legal structure and language leave room for both. Unlike the poet, the judicial misreader can never admit that he misreads; the attempt to be great must be shrouded in the language of precedential legitimacy. We have made a choice, like the brothers in Freud's parable, to privilege social cohesion and order over individual initiative. But our choice, like theirs, is fraught with ambivalence; we respect legitimacy, but celebrate greatness. n297

#### Loss of legitimacy prevents court from checking military, ensuring nuclear war.

Kellman 89 [(Barry Kellman, prof of law @ DePaul, Dec 1989, “JUDICIAL ABDICATION OF MILITARY TORT ACCOUNTABILITY: BUT WHO IS TO GUARD THE GUARDS THEMSELVES?” 1989 Duke L.J. 1597)]

In this era of thermonuclear weapons, America must uphold its historical commitment to be a nation of law. Our strength grows from the resolve to subject military force to constitutional authority. Especially in these times when weapons proliferation can lead to nuclear winter, when weapons production can cause cancer, when soldiers die unnecessarily in the name of readiness: those who control military force must be held accountable under law. As the Supreme Court recognized a generation ago, the Founders envisioned the army as a necessary institution, but one dangerous to liberty if not confined within its essential bounds. Their fears were rooted in history. They knew that ancient republics had been overthrown by their military leaders. . . .. . . We cannot close our eyes to the fact that today the peoples of many nations are ruled by the military. We should not break faith with this Nation's tradition of keeping military power subservient to civilian authority, a tradition which we believe is firmly embodied in the Constitution. 1 Our fears may be rooted in more recent history. During the decade of history's largest peacetime military expansion (1979-1989), more than 17,000 service personnel were killed in training accidents. 2 In the same period, virtually every facility in the nuclear bomb complex has been revealed to be contaminated with radioactive and poisonous materials; the clean-up costs are projected to exceed $ 100 billion. 3 Headlines of fatal B-1B bomber crashes, 4 the downing of an Iranian passenger plane, 5 the Navy's frequent accidents 6 including the fatal crash of a fighter plane into a Georgia apartment complex, 7 remind Americans that a tragic price is paid to support the military establishment. Other commentaries may distinguish between the specific losses that might have been preventable and those which were the random consequence of what is undeniably a dangerous military program. This Article can only repeat the questions of the parents of those who have died: "Is the military accountable to anyone? Why is it allowed to keep making the same mistakes? How many more lives must be lost to senseless accidents?" 8 This Article describes a judicial concession of the law's domain, ironically impelled by concerns for "national security." In three recent controversies involving weapons testing, the judiciary has disallowed tort accountability for serious and unwarranted injuries. In United States v. Stanley, 9 the Supreme Court ruled that an Army sergeant, unknowingly drugged with LSD by the Central Intelligence Agency, could not pursue a claim for deprivation of his constitutional rights. In Allen v. United States, 10 civilian victims of atmospheric atomic testing were denied a right of tort recovery against the government officials who managed and performed the tests. Finally, in Boyle v. United Technologies, 11 the Supreme Court ruled that private weapons manufacturers enjoy immunity from product liability actions alleging design defects. A critical analysis of these decisions reveals that the judiciary, notably the Rehnquist Court, has abdicated its responsibility to review civil matters involving the military security establishment. Standing at the vanguard of "national security" law, 13 these three decisions elevate the task of preparing for war to a level beyond legal accountability. They suggest that determinations of both the ends and the means of national security are inherently above the law and hence unreviewable regardless of the legal rights transgressed by these determinations. This conclusion signals a dangerous abdication of judicial responsibility. The very underpinnings of constitutional governance are threatened by those who contend that the rule of law weakens the execution of military policy. Their argument -- that because our adversaries are not restricted by our Constitution, we should become more like our adversaries to secure ourselves -- cannot be sustained if our tradition of adherence to the rule of law is to be maintained. To the contrary, the judiciary must be willing to demand adherence to legal principles by assessing responsibility for weapons decisions. This Article posits that judicial abdication in this field is not compelled and certainly is not desirable. The legal system can provide a useful check against dangerous military action, more so than these three opinions would suggest. The judiciary must rigorously scrutinize military decisions if our 18th century dream of a nation founded in musket smoke is to remain recognizable in a millennium ushered in under the mushroom cloud of thermonuclear holocaust.

### ---Democracy impact

#### Judicial legitimacy is a model for constitutional democracy

Horowitz, Journal of Democracy Writer, 06

(Donald L., “Constitutional Courts: A Primer For Decision Makers”, <http://muse.jhu.edu.floyd.lib.umn.edu/journals/journal_of_democracy/v017/17.4horowitz.html>, 7/1/09)

Judicial review is a growing institution. Originating in the United States two centuries ago, the power to declare governmental action, whether legislative or executive, unconstitutional has spread around the world in the last half century. As of 2005, more than three-quarters of the world's states had some form of judicial review for constitutionality enshrined in their constitutions.1 This figure includes a good many countries with undemocratic regimes, in which the effectiveness of judicial review might be subject to question, but the prevalence of the institution nonetheless testifies to the current fashion for judicial review. The popularity of judicial review is a recent phenomenon. As we shall see, judicial review is a function performed either by a specialized constitutional court or by a court with more general jurisdiction, typically a supreme court. While a growing number of new constitutions provide for judicial review in a supreme court, the stronger trend in new democracies has been to create separate constitutional courts.2 In 1978, only 26 percent of constitutions provided for a constitutional court,3 while approximately 44 percent did by 2005. There are regional variations in the relative popularity of the two types. For example, supreme-court review is more common than constitutional-court review in Latin America.4 Worldwide, however, only about 32 percent of constitutions locate judicial review in a supreme court or other ordinary court. It has become more and more difficult for constitution-makers to avoid judicial review. In the post-1989 period, constitution-making has become an international and comparative exercise in ways it was not previously. Increasingly, there are norms of constitutional process [End Page 125] and constitutional provisions propagated as desirable. Some part of the fashion for judicial review derived initially from a few conspicuous adoptions, as in Germany, Japan, and India. Some part derived, too, from the adjudication of new rights by new supranational institutions, particularly in Europe.5 Once optional for new democracies, constitutional courts are now generally regarded as standard equipment. To be sure, it is possible for constitutional drafters to defy the counsel of international advisors and monitors of democratic progress by choosing, as Afghanistan and Iraq did, not to create constitutional courts. It is, however, exceedingly unusual to fail to provide for judicial review altogether, and the more common choice, exemplified by Indonesia (2002), Côte d'Ivoire (2000), Latvia (2003), Chile (2001), and Spain (1992), is the constitutional-court model.

#### That turns the case

#### Root Cause: Judicial illegitimacy *exacerbates racism* and *kills* minority engagement in political institutions.

**Fagan 07** [(Jeffery, Professor of Law and Public Health @ Columbia University) “Legitimacy and Criminal Justice”, Ohio State Journal of Criminal Law, 2007] **DD**

Even as crime rates cyclically rise and fall, with high crime sometimes being viewed as a major social problem and sometimes being seen as “under control,” the persistence of popular narratives of an unresponsive and oppressive legal system has created a political “space” for significant changes in law and policy, with a steady accretion of power to police and prosecutors.11 The changes in law and policy over the past four decades have only worsened the conditions that produce these disparities in perceived legitimacy.12 New laws create pressures to contract the schedule of criminal procedural rights for criminal defendants developed by the Warren and Burger Courts nearly four decades ago. The search for drugs has animated policing practices that increase racial disparities in encounters with the police, and also disparities in the ratings and outcomes of those encounters. 13 In minority communities, these pressures often motivate citizens to withdraw from engagement with the legal system in the co-production of justice and security, while alienation and cynicism give rise to forms of opposition and resistance that further unravel the system’s legitimacy.14 These challenges to legitimacy raise serious questions not only about the role of criminal law and legal institutions to maintain social norms and express fundamental principles of justice, but also for trust in government more generally. The challenges to legitimacy have important implications for the viability of the law and the legal system. First, people who view the law as illegitimate are less likely to obey it, 15 and people who view police officers and judges as lacking in legitimacy are less likely to follow their directives.16 Although the law is based on the implicit or explicit threat of sanctioning for wrongdoing, the legal system depends heavily on voluntary compliance from most citizens. Hence, lower levels of legitimacy make social regulation more costly and difficult. So, legitimacy is both a social and a political good. As Professor Solum notes, “[a] society in which citizens can reasonably regard themselves as having a[n] . . . obligation to obey the law is better than a society in which the law begins with a presumption of illegitimacy.”17 Second, the police depend heavily on the voluntary cooperation of citizens to fight crime. Citizens report crime and criminals, informally help to police their neighborhoods, and aid the courts as jurors and witnesses. Without these cooperative acts from the public, the police would have greater difficulty maintaining civil order. Accordingly, society has a lot to lose when the public loses confidence in the legal system: challenges to legitimacy raise important questions about the ability of criminal law and legal institutions to maintain social norms and social order, and to express fundamental principles of justice.

#### Takes out Aff solvency

#### Links prove the plan is unconstitutional which means it gets repealed by the Supreme Court. No chance of Aff accessing solvency.

#### b. Fagan 07 shows people won’t obey laws if perceptions of illegitimacy are high, means corporations will *ignore* the right to be forgotten even if it is passed.

#### Judicial legitimacy is the bedrock of all other civil rights. Absent trustworthy courts there is no way to defend against other forms of rights violations which prevent people from pursuing their conception of the good.

#### Democracy prevents nuclear warfare, ecosystem collapse, and extinction

Diamond 95 (Larry, a professor, lecturer, adviser, and author on foreign policy, foreign aid, and democracy, “Promoting Democracy in the 1990s: Actors and instruments, issues and imperatives : a report to the Carnegie Commission on Preventing Deadly Conflict”, December 1995, http://wwics.si.edu/subsites/ccpdc/pubs/di/di.htm)

This hardly exhausts the lists of threats to our security and well-being in the coming years and decades. In the former Yugoslavia nationalist aggression tears at the stability of Europe and could easily spread. The flow of illegal drugs intensifies through increasingly powerful international crime syndicates that have made common cause with authoritarian regimes and have utterly corrupted the institutions of tenuous, democratic ones. Nuclear, chemical, and biological weapons continue to proliferate. The very source of life on Earth, the global ecosystem, appears increasingly endangered. Most of these new and unconventional threats to security are associated with or aggravated by the weakness or absence of democracy, with its provisions for legality, accountability, popular sovereignty, and openness.

### ---rule of law

#### Strong judicial legitimacy key to rule of law

Murphy 12 (Richard W., Visiting Professor (2005-2006), Seton Hall University School of Law; Professor, William Mitchell College of Law., Judicial Deference, Agency Commitment, and Force of Law, March 28, <http://moritzlaw.osu.edu/students/groups/oslj/files/2012/03/66.5.murphy.pdf>, p. 1013) ap

The law governing judicial deference to agency statutory constructions is a ghastly brew of improbable fictions and proceduralism. One reason this state of affairs persists is that courts have failed to resolve a contradiction between two competing, sensible impulses in deference doctrine. Oceans of precedent over the last 150 years have stressed that courts should defer to longstanding, reasonable constructions by agencies of statutes they administer. Then along came Chevron, which extolled agency flexibility and instructed courts to extend strong deference even to interpretive flip-flops. Competition between the virtues of interpretive consistency and flexibility has bubbled through and confused judicial deference analysis ever since. The Supreme Court’s recent efforts to limit the scope of Chevron’s strong deference to those agency constructions carrying the “force of law” has worsened such confusion, in part because the Court’s discussion and application of this concept were incoherent.¶ This Article proposes a new “commitment” approach to this “force of law” limitation that has deep roots in the concept of the “rule of law” and considerable power to clarify deference doctrine by resolving the clash between the competing values of interpretive consistency and flexibility. For the rule of law to be genuine, the default position must be that “laws” have general applicability—in other words, the law for X should be the law for Y as well. This truism suggests that an agency’s statutory construction properly can enjoy the force of law only where the agency has committed to applying its construction consistently across time and parties. Where an agency’s construction is longstanding, the agency’s commitment to consistent application is self-evident. The puzzle, of course, is to reconcile this commitment approach with Chevron’s praise of interpretive flexibility. One solution is to recognize that an agency can genuinely commit to a new interpretation by adopting it in a manner that makes it costly to change course later. Where agencies commit to consistency in this way, there is less need for courts to engage in independent statutory construction to protect rule-of-law values, which should leave courts freer to accept the premise of strong deference that the best way to determine the “meaning” of an agency’s statute is to trust the agency’s own (rational) construction.

#### Judicially supported rule of law is key to global peace

Charles S. Rhyne, (“Law Day Speech for Voice of America delivered on the first Law Day”. <http://www.abanet.org/publiced/lawday/rhyne58.html>)

Law and courts exist to protect every citizen of the United States in his person and property and in his individual rights and privileges under the Constitution. The ultimate power to change or expand the law in our system remains with its source, the people. They can elect as lawmakers those who will vote for wise laws and vote out of office those who do not. They can also amend the Constitution as experience dictates the necessity of change. ¶ In these days of soul-searching and re-evaluation and inventorying of basic concepts and principles brought on by the expansion of man’s vision to the new frontiers and horizons of outer space, we want the people of the world to know that we in America have an unshakable belief in the most essential ingredient of our way of life—the rule of law. The law we honor is the basis and foundation of our nation’s freedom and the freedom for the individual which exists here. And to Americans our freedom is more important than our very lives. ¶ The rule of law has been the bulwark of our democracy. It has afforded protection to the weak, the oppressed, the minorities, the unpopular; it has made it possible to achieve responsiveness of the government to the will of people. It stands as the very antithesis of Communism and dictatorship.¶ When we talk about “justice” under our rule of law, the absence of such justice behind the Iron Curtain is apparent to all. When we talk about “freedom” for the individual, Hungary is recalled to the minds of all men. And when we talk about peace under law—peace without the bloodbath of war—we are appealing to the foremost desire of all peoples everywhere. ¶ The tremendous yearning of all peoples for peace can only be answered by the use of law to replace weapons in resolving international disputes. We in our country sincerely believe that mankind’s best hope for preventing the tragic consequences of nuclear-satellite-missile warfare is to persuade the nations of the entire world to submit all disputes to tribunals of justice for all adjudication under the rule of law. We lawyers of America would like to join lawyers from every nation in the world in fashioning an international code of law so appealing that sentiment will compel its general acceptance. ¶ Man’s relation to man is the most neglected field of study, exploration and development in the world community. It is also the most critical. The most important basic fact of our generation is that the rapid advance of knowledge in science and technology has forced increased international relationships in a shrunken and indivisible world. ~~Men~~ [humans] must either live together in peace or in modern war we will surely die together. History teachers that the rule of law has enabled [hu]mankind to live together peacefully within nations and it is clear that this same rule of law offers our best hope as a mechanism to achieve and maintain peace between nations. ¶ The lawyer is the technician in man’s relationship to man. There exists a worldwide challenge to our profession to develop law to replace weapons before the dreadful holocaust of nuclear war overtake our people. ¶ It is said that an idea can be more powerful than an atom because strength today resides in man’s mind—not his muscle. We lawyers of the world must take the idea of peace under the rule of law and make it a force superior to weapons and thus outlaw wars of weapons. Law offers the best hope for order in a disordered world. ¶ The law of force or the force of law will rule the world. In the field of human conduct the law has never confessed failure. The struggle for a world ruled by law must go on with increased intensity. We must prove that the genius of man in the field of science and technology has not so far outstripped his inventiveness in the sphere of human relations as to make catastrophe inevitable. If [hu]man[s] can conquer space [t]he[y] can also solve the need for legal machinery to insure universal and lasting peace. ¶ In our country ignorance of the value of law in international relations and what it could do for the people of the world is appalling. A major purpose of “Law Day-U.S.A.” is therefore to demonstrate to our people that the need for law in the world community is the greatest gap in the growing structure of civilization. And we lawyers of America are anxious to work with lawyers and men of good of all nations in filling this gap in that structure. We believe that no greater challenge exists for any profession and that no greater service to mankind can be performed.

### ---2NR perception link

#### 1NC Fisher evidence says the right to be forgotten is perceived as a paternalistic interference in free speech – Court upholding the right would tank the court’s legitimacy because the perception of court rulings is key to legitimacy – that’s the Idle evidence

### Link work---Top Level

#### - Extend Idleman – making controversial decisions that overrule precedent imply the past court made a mistake, killing its legitimacy. Also, it creates inconsistency which by itself kills perceived legitimacy.

#### - All the impacts require the court to be able to constrain the other branches – that requires them to have high legitimacy in general so other controversial decisions are accepted. Uniqueness goes neg – you should err towards preserving court capital, any risk that the plan tanks capital means you should vote neg.

#### Justices agree – they frequently refer to the role of consistency with principle in judicial legitimacy

Gibson 14 [(James L. Gibson Sidney W. Souers Professor of Government Department of Political Science Professor of African and African American Studies Director, Program on Citizenship and Democratic Values Weidenbaum Center on the Economy, Government, and Public Policy Washington University in St. Louis; Michael J. Nelson Ph.D. Candidate, Department of Political Science Graduate Student Associate, Center for Empirical Research in the Law Washington University in St. Louis) “The Legitimacy of the U.S. Supreme Court: Conventional Wisdoms, and Recent Challenges Thereto” Feb 7, 2014] AT

The justices of Court are keenly aware of the importance of legitimacy to their institution, often discussing the concept in their rulings. For example, Justices O’Connor, Souter, and Kennedy, in their well-known opinion in Planned Parenthood v. Casey (1992) write: The Court's power lies, rather, in its legitimacy, a product of substance and perception that shows itself in the people's acceptance of the Judiciary as fit to determine what the Nation's law means, and to declare what it demands. . . The Court must take care to speak and act in ways that allow people to accept its decisions on the terms the Court claims for them, as grounded truly in principle, not as compromises with social and political pressures having, as such, no bearing on the principled choices that the Court is obliged to make. Thus, the Court's legitimacy depends on making legally principled decisions under circumstances in which their principled character is sufficiently plausible to be accepted by the Nation (865-866). The Casey example is not unique; Farganis (2012, 207) reports that “since the Court’s 1954 decision in Brown, in fact, the justices have made seventy-one such references to the Court’s institutional legitimacy, compared with just nine in the 164 years up to that point.”

#### Prefer this evidence since inside opinions have the best knowledge of how the court works.

#### This also means regardless of all aff evidence, the court will act based on the capital model – if it *believes* that its perceived legitimacy is low because of a controversial ruling, then it will not restrict the actions of other branches which is by itself sufficient to tank rule of law/democracy. This circumvents their offense – even if court power is actually high it means nothing if the court believes its power is low.

### ---More link work

#### Following precedent is key to legitimacy – courts derive their power from the public perception of its neutrality.

Yoo 01 (John, Law professor at Cal Berkeley, SYMPOSIUM: BUSH V GORE: In Defense of the Court's Legitimacy, University of Chicago Law review, Summer 01, accessed with lexis)

A third way to examine whether Bush v Gore is likely to undermine the Court's legitimacy is to look at current theories of the sources of the Court's authority. The Court itself has sought to give content to its "legitimacy" in Planned Parenthood of Southeastern Pennsylvania v Casey. n35 In refusing to overrule Roe v Wade, n36 a plurality explained that reversing its precedent would undermine the Court's legitimacy, which it saw as the very source of the judiciary's authority. "As Americans of each succeeding generation are rightly told, the Court cannot buy support for its decisions by spending money and, except to a minor degree, it cannot independently coerce obedience to its decrees." n37 Thus, the judiciary's power is distinguished from the use of force or finances, which are the tools of the political branches. "The Court's power lies, rather, in its legitimacy, a product of substance and perception that shows itself in the people's acceptance of the Judiciary as fit to determine what the Nation's law means and to declare what it demands." n38 Without the sword or purse, the Casey plurality believes, the Court's authority derives from the public's acceptance of its power to interpret the Constitution. [\*782] How does the Court maintain this legitimacy? According to the Casey plurality, the Court receives its public support by "making legally principled decisions under circumstances in which their principled character is sufficiently plausible to be accepted by the Nation." n39 In other words, only by acting in a manner that suggests that its decisions are the product of law rather than politics can the Court maintain its legitimacy. Therefore, the Court must adhere to settled precedent, lest the public believe that the Court is merely just another political actor. "To overrule under fire in the absence of the most compelling reason to reexamine a watershed decision would subvert the Court's legitimacy beyond any serious question." n40 Without this legitimacy, the Court would be unable to perform its role as interpreter of the Constitution, which at times may require the Court to act against the popular will in favor of individual rights. Leading social scientists appear to agree with the Casey plurality's notion of judicial legitimacy. The Court's institutional legitimacy both enhances the legitimacy of particular decisions and increases the voluntarily acceptance of unpopular decisions. n41 Valuable as it is, however, legitimacy is hard to come by. Political scientists have emphasized the limited ability of the federal courts to enforce their decisions, and hence have turned to the Court's legitimacy as an explanation for compliance. n42 The Court's standing is further complicated because it lacks any electoral basis for its legitimacy. n43 The way to acquire this legitimacy, many scholars seem to believe, is for the Court to appear to act neutrally, n44 objectively, n45 or fairly n46 by following standards of procedural justice or by making decisions that follow principled rules.

#### Outweighs---A) Even if activism theoretically affirms court power, the effect on perceived legitimacy kills *enforcement power* – the court would be ignored without perception – their impact is missing a key internal link

#### B) This outweighs other internal links to legitimacy – the structure of the court requires it to act as an independent third branch that checks the other branches – controversial decisions that perception. Prefer this – it’s tied to the *innate purpose* of the court which most affects its legitimacy

#### C) Robust evidence from various sources agrees – consensus represents the majority view, their evidence is a fringe opinion, whereas mine is based on a variety of evidence and analysis.

Gibson 14 [(James L. Gibson Sidney W. Souers Professor of Government Department of Political Science Professor of African and African American Studies Director, Program on Citizenship and Democratic Values Weidenbaum Center on the Economy, Government, and Public Policy Washington University in St. Louis; Michael J. Nelson Ph.D. Candidate, Department of Political Science Graduate Student Associate, Center for Empirical Research in the Law Washington University in St. Louis) “The Legitimacy of the U.S. Supreme Court: Conventional Wisdoms, and Recent Challenges Thereto” Feb 7, 2014] AT

Beyond the justices’ opinions, journalistic accounts of the Court often describe actions taken by the justices to preserve institutional legitimacy. In a particularly stark case, Crawford (2012) reports that Chief Justice Roberts acted strategically out of concern for institutional legitimacy during the opinion- writing process for National Federation of Independent Business v. Sebelius, changing his vote from one to strike down the Affordable Care Act to one that preserved the constitutionality of the legislation. Crawford writes, “As Chief Justice, [Roberts] is keenly aware of his leadership role on the Court, and he is also sensitive to how the Court is perceived by the public. There were countless news articles in May warning of damage to the Court – and to Robert’s reputation – if the Court were to strike down the mandate.” In short, legitimacy is a concept with both practical and scholarly importance. With this in mind, legitimacy has become a commanding focus of a wide slew of social scientists, journalists, and judges. Over the past decade, research on this topic has flourished, with scholars probing the concept from all angles. Indeed, with so much new and concerted attention to issues of legitimacy, it should not be surprising that some of the longstanding conventional wisdoms are being challenged and revised. We focus here in particular on four such challenges, structuring this chapter as follows.

#### C) Past rulings confirm – lack of legitimacy means other branches attack the court – kills its power to restrict those branches.

Rappaport 04 (Michael, Professor at University of San Diego School of Law, SYMPOSIUM: THE REHNQUIST COURT: IT'S THE O'CONNOR COURT: A BRIEF DISCUSSION OF SOME CRITIQUES OF THE REHNQUIST COURT AND THEIR IMPLICATIONS FOR ADMINISTRATIVE LAW, Northwestern Law review, Fall 2004, accessed with lexis)

Many of the decisions that have been criticized for excessive judicial supremacy are actually better understood as reflecting an undue concern with the Court's political capital. For example, Larry Kramer portrays United States v. Dickerson, which held unconstitutional a congressional statute that conflicted with Miranda v. Arizona, as reflecting a judicially supremacist view that took umbrage at, and refused to defer to, a constitutional interpretation by Congress. n46 In my view, however, Dickerson is better understood as deriving from the Court's unwillingness to be seen as overruling Miranda. Miranda arguably is the most famous decision in all of constitutional law. Citizens who know little else about constitutional law know from television and movies about "the right to remain silent." If the Rehnquist Court had overruled Miranda, it would have not only been criticized by elite opinion but also taken a highly visible action to eliminate "a constitutional right." As a result, Dickerson could have been used to suggest that the Court was demolishing the people's liberties generally. In this situation, the most politically sensitive "conservative" Justices O'Connor, Kennedy, and Rehnquist bolted. A similar analysis applies to Planned Parenthood v. Casey, where the joint opinion of Justices O'Connor, Kennedy, and Souter refused to overrule Roe v. Wade. n47 Kramer again views this case as involving undue judicial supremacy because the joint opinion was concerned about the appearance created to its independence and credibility if it were to "overrule under fire ... a watershed decision." n48 While I certainly do not want to defend the joint opinion on legal grounds, I see no reason to doubt that it was motivated by its stated fear for the political capital of the Court rather than disrespect for the public's constitutional views. Had the Court overruled Roe v. Wade, it was likely to have been subjected to a vehement attack by the political elite as well as by large numbers of ordinary citizens. These attacks could have charged not only that the Court had mistakenly eliminated a constitutional right, but that it had responded to political pressure. [\*378] It was much safer for the Court to approve the precedent while suggesting that the decision was wrong as an original matter. n49 Finally, the Court's federalism decisions can also be understood as an element of Justice O'Connor and Kennedy's political sensitivity. n50 While the five federalism Justices clearly seek to enforce constitutional federalism, the Court has not struck down any politically important legislation that might provoke the political branches to strongly attack it. Justices O'Connor and Kennedy have also adopted narrow positions regarding federalism, both in separate concurrences and in their votes. n51 It would seem that Justices O'Connor and Kennedy are wary of doing anything that would provoke the strong reactions that occurred during the New Deal.

#### D) Overall trend of court decisions confirms

Cole 6 (David, Law professor at Georgetown, SYMPOSIUM: JUST RIGHT?: ASSESSING THE REHNQUIST COURT'S PARTING WORDS ON CRIMINAL JUSTICE: The Liberal Legacy of Bush v. Gore, Georgetown Law Journal, June 2006, accessed with lexis)

Whether or not one agrees with the substance of the criticism of the Court outlined above -and I presume that at least the five Justices in the Bush v. Gore majority did not agree with it -the mere existence of the criticism is a serious problem for an institution whose authority depends largely on perceptions of its legitimacy. As an unelected body in a democratic polity, without the means to enforce its own judgments, the judiciary more than any other branch of government must rely on the authority of legitimacy. And its legitimacy, in turn, rests on the perception that it is not simply a political institution, but that it is guided by constitutional principle and law that rises above -and constrains -everyday partisan political decisionmaking. The Court is at its most vulnerable where it is seen as deciding cases without a basis in constitutional principle because then [\*1431] there appears to be little to differentiate it from the political branches. And if the Court cannot be distinguished from the political branches, it loses its authority to decide; if decisions are politically driven, why shouldn't they be decided in a democracy by officials accountable to the people through elections? Accordingly, the Court's most precious commodity is its own legitimacy. Bush v. Gore called that legitimacy deeply into question. The Court's record since then suggests that the Justices may realize this and, consciously or subconsciously, have sought to rehabilitate the Court's image by reducing partisan division, correcting to some extent the Court's considerably conservative tilt, and emphasizing the importance of a rule of law that is distinct from and rises above politics. The desire to reduce perceptions of partisanship would not necessarily favor liberal or conservative results. Such perceptions could be offset as much by liberals supporting conservative results as vice versa. In fact, however, liberals more frequently seem to have been the beneficiaries of the reaction. Since Bush v. Gore, the Court's rulings in prominent cases have been markedly less "partisan," and conservative Justices have sided with their more liberal counterparts to reach liberal results more often than have liberal Justices sided with conservatives to support a conservative result. n15 The four decisions from the 2003 Term that prompted this Symposium -Blakely v. Washington, n16 Crawford v. Washington, n17 Rasul v. Bush, n18 and Hamdi v. Rumsfeld n19 -fit this pattern. In all four cases, conservative Justices joined with their more liberal colleagues to rule against the Bush Administration and in favor of criminals or alleged terrorists. In Crawford, Justices Scalia, Kennedy, and Thomas joined forces with Justices Stevens, Souter, Breyer, and Ginsburg to affirm the right of criminal defendants under the Sixth Amendment's Confrontation Clause to confront the evidence used against them by barring introduction of taped statements where the defendant had no opportunity to cross-examine the witness. n20 In Blakely, Justices Scalia and Thomas joined Justices Stevens, Souter, and Ginsburg to form a majority, while Justice Breyer sided with Chief [\*1432] Justice Rehnquist and Justices O'Connor and Kennedy in dissent. n21 The majority held that Washington's sentencing guidelines scheme violated the defendant's Sixth Amendment right to a jury trial by permitting his sentence to be increased over the statutory maximum on the basis of facts not found by the jury or admitted by the defendant. n22 Neither Crawford nor Blakely came as a complete surprise and, as one contributor to this Symposium shows, were arguably forecast by prior decisions in the area. n23 But although these decisions may be explained as extensions of pre-Bush v. Gore cases, that claim cannot be made with respect to the enemy combatant decisions. In Rasul v. Bush, Justices Kennedy and O'Connor joined their more liberal colleagues to hold that foreign nationals detained at Guantanamo Bay, Cuba, as "enemy combatants" had a right to seek habeas corpus relief challenging the legality of their detention. n24 And in Hamdi v. Rumsfeld, eight members of the Court rejected the President's claim that he could detain a U.S. citizen as an "enemy combatant" without any hearing whatsoever. n25 Justice O'Connor, joined by Chief Justice Rehnquist and Justices Kennedy and Breyer, reasoned that due process demanded that such a detainee be afforded notice of the charges and a "meaningful opportunity" to rebut them before a neutral decisionmaker. n26 Justices Souter and Ginsburg concurred in that result, although they would have gone further, holding that the Non-Detention Act barred Hamdi's detention. n27 Justices Scalia and Stevens dissented, maintaining that under the Constitution, the government has only two options when confronted with a citizen that it alleges is fighting for the enemy in a military conflict -to try him in the criminal justice system for treason or to ask Congress to suspend the writ of habeas corpus. n28 Only Justice Thomas adopted the government's argument that it could hold Hamdi indefinitely without a hearing. n29 The decisions that sparked this Symposium are noteworthy from four vantage points. First, the Rehnquist Court was not known for being sympathetic to [\*1433] criminal defendants -much less suspected terrorists -yet in all of these cases it ruled in favor of alleged criminals and terrorists. Second, the Supreme Court has historically been extremely deferential to executive claims of national security in times of crisis, yet in the enemy combatant cases the Court resoundingly rejected President Bush's arguments for deference. Third, none of the decisions was decided by the traditional conservative-liberal divide. The most important point, however, is that while these cases may seem aberrational -indeed, that perception is what prompted this Symposium -they are not. Since Bush v. Gore, many of the Court's most prominent and contentious cases have been decided by a majority comprised largely of liberal Justices, with one or more conservatives signing on to make up the majority. It is as if, having consolidated their power by ensuring that President Bush won the 2000 election, the conservative Justices felt more free, or, as I will argue, more obliged, to side with liberal Justices. The trend is particularly evident in prominent cases, suggesting that the Justices may, again perhaps subconsciously, recognize that the cases the public notices have the most impact on perceptions of the Court and therefore on its legitimacy.

### ---Uniqueness

#### Court legitimacy is high now and generally robust, but even a single controversial decision can tank legitimacy

Gibson 14 [(James L. Gibson Sidney W. Souers Professor of Government Department of Political Science Professor of African and African American Studies Director, Program on Citizenship and Democratic Values Weidenbaum Center on the Economy, Government, and Public Policy Washington University in St. Louis; Michael J. Nelson Ph.D. Candidate, Department of Political Science Graduate Student Associate, Center for Empirical Research in the Law Washington University in St. Louis) “The Legitimacy of the U.S. Supreme Court: Conventional Wisdoms, and Recent Challenges Thereto” Feb 7, 2014] AT

Consequently, seven statements were put to the respondents, with the request that they indicate their degree of agreement or disagreement with each statement. Figure 1 shows the statements, as well as the margin of supportive responses, which is simply the difference between the percentage of respondents expressing support for the institution in response to the statement and the percentage of respondents who did not express support for the institution.8 The figure demonstrates that, on balance, Americans are quite supportive of the Court, with more Americans providing supportive responses than unsupportive responses for most of the questions posted.9 Yet, the variation shown in Figure 1 suggests that the Court’s support may not be unlimited. While few want to do away with the U.S. Supreme Court, considerable support exists for changing the institution’s balance between judicial independence and accountability. Generally, we conclude from these data that the Supreme Court does enjoy a “reservoir of goodwill,” but that reservoir is far from bottomless.10

Continues

Moreover, existing theoretical and empirical evidence suggests that most individual-level change in the Court’s support is temporary due to a process of regeneration. Mondak and Smithey (1997) suggest that the deleterious effect of dissatisfaction with a singular decision on individual-level support for the court is short-lived; after a shock, diffuse support gradually increases, eventually returning to its equilibrium level, as democratic values regenerate support for the Court. This claim has been validated empirically using representative, national samples; Durr, Martin, and Wolbrecht (2000) show that short term disruptions in an individual’s support for the Court have effects that only last for a short period. Still, this is not to say that the U.S. Supreme Court is invincible. Baird (2001) suggests that the relationship between specific and diffuse support is a gradual, incremental one. Individuals seem to keep a “running tally” of decisions, crediting the Court when it makes a pleasing decision and subtracting from the tally when the Court makes a disagreeable decision. This running tally theory suggests that the Court’s diffuse support could suffer once some accumulated threshold level of dissatisfaction is reached. Conversely, specific support can be transformed into obdurate diffuse support through a string of pleasing policy decisions; such a change is gradual, underscoring the varied and varying relationships observed between indicators of the two concepts (Gibson, Caldeira, and Baird 1998; Baird 2001). Thus, the relationship between diffuse and specific support is “sticky,” and is far from a one-to-one correlation. This theory is one way to account for variation in levels of diffuse support for the Court among African Americans. Gibson and Caldeira (1992) show that diffuse support for the Court is comparatively lowest among those African Americans who grew up before the Court acted to remedy civil rights violations against them, and among those growing up after the civil rights revolution. Post-civil rights African Americans provide some of the only evidence to date that accumulated grievances can undermine diffuse support in the institution. Yet the relationship is “sticky” inasmuch as the civil rights generation of African Americans did not adjust its attitudes toward the Court as the justices turned away from the expansion of civil rights. However, new research on the Court’s public support has challenged this conventional view, suggesting that individual-level performance dissatisfaction with the Court translates directly and simultaneously into a decrease in diffuse support. The strongest empirical support for this theory comes in a recent article by Bartels and Johnston (2013), who claim that “[c]ontrary to conventional wisdom, a potent ideological foundation underlies Supreme Court legitimacy vis-à-vis subjective ideological disagreement with the Court’s policy-making” (Bartels and Johnston 2013, 197, emphasis in original). Relying on a nationally-representative survey, Bartels and Johnston present empirical evidence that, as individuals’ disagreement with the ideological direction of the Court’s decisions increases, their diffuse support for the Court decreases. Moreover, Bartels and Johnston report data from a survey experiment whose results suggest that even a singular unpopular decision can result in a decrease in individual-level diffuse support. Similarly, Christenson and Glick (2013), analyzing responses to the U.S. Supreme Court’s important 2012 Affordable Care Act decision, found that both exposure to information about the case and individual-level agreement or disagreement with the decision affect change in levels of diffuse support among respondents.These are important empirical findings from the standpoint of legitimacy theory. If each individual decision issued by the Court has the potential to imperil its legitimacy, then we should expect the Court to change its behavior in order to protect the institution. Indeed, a Court whose public support rests on popular approval of its decisions, rather than a long-standing deep pool of public esteem, should be less likely to issue decisions that protect the rights of minorities, to exercise the power of judicial review to check the popularly-elected branches of government, and to issue decisions that counter the wishes of a majority of Americans. Given the important constitutional and political role of the Court in the American democratic system of governance, it is nearly impossible to overstate the importance of this theoretical and empirical contention.11

#### Prefer: A) Cites a wide range of evidence

#### B) recency – court changes over time so recent evidence best reflects current court opinion

### ---A2 only applies to Supreme Court

#### applies to both

Gibson 14 [(James L. Gibson Sidney W. Souers Professor of Government Department of Political Science Professor of African and African American Studies Director, Program on Citizenship and Democratic Values Weidenbaum Center on the Economy, Government, and Public Policy Washington University in St. Louis; Michael J. Nelson Ph.D. Candidate, Department of Political Science Graduate Student Associate, Center for Empirical Research in the Law Washington University in St. Louis) “The Legitimacy of the U.S. Supreme Court: Conventional Wisdoms, and Recent Challenges Thereto” Feb 7, 2014] AT

Our focus in this chapter is on the U.S. Supreme Court and we therefore structure our arguments around this particular institution. Of course, nearly every claim we make about the legitimacy of the U.S. Supreme Court applies with equal if not greater force to the lower federal courts. We note as well that concern for judicial legitimacy extends far beyond the U.S. Supreme Court, with a great deal of contemporary interest in how state courts acquire and maintain legitimacy, for example. In terms of empirical research on judicial legitimacy, only a handful of studies has reported on courts other than the U.S. Supreme Court and the state supreme courts (e.g., Benesh 2006 – state court systems; Benesh, Scherer, and Steigerwalt 2009 – lower federal courts; Scherer and Curry 2010 – lower federal courts. )

#### We affect the Supreme Court – a. the right to be forgotten is a high-profile case so it’s likely to get reviewed at the highest level. b. it’s a sweeping change in the first amendment paradigm, so if a lower court accepts the right to be forgotten it, their decision would get challenged and go to the highest court. c. it’s an unprecedented case since it balances privacy and free speech in the context of the internet, which hasn’t been explored heavily yet; the Supreme Court would review it in order to set precedent.

### ---court clog add-on

#### The lack of clarity of the bill clogs the courts

Veldt 14 [(Digital Marketer, Writer & Online Business Builder) “THE EU’S CLEVER WORKAROUND FOR THAT PESKY “FREEDOM OF EXPRESSION” THING” MAY 15 2014] AT

Here’s what will happen: Google will spend a ton of money hiring more people to handle the inevitable flood of removal requests that will come their way from anyone and everyone who has an unflattering page appear in searches for their name. Those new hires will spend 99.99% of their day rejecting these requests because: A) People don’t understand what is and is not “eligible” for removal under this ruling, or don’t care and thought they’d try anyway B) Due to the hazy language, Google can argue almost anything is of public interest or relevant According to the ruling, every time Google rejects a request, the data subject can then bring it to the courts. In the end, Google will build a rejection team and the European legal system will be clogged with ridiculous efforts to deindex a webpage.

#### Court clog causes collapses the entire federal judiciary which is sufficient to kill legitimacy; it also damages the supreme court’s ability to effectively handle cases, which kills legitimacy.

Oakley 96 ~John B. Oakley, Distinguished Professor of Law Emeritus US Davis School of Law, 1996 The Myth of Cost-Free Jurisdictional Reallocation~

￼Personal effects: The hidden costs of greater workloads. The hallmark of federal justice traditionally has been the searching analysis and thoughtful opinion of a highly competent judge, endowed with the time as well as the intelligence to grasp and resolve the most nuanced issues of fact and law. Swollen dockets create assembly-line conditions, which threaten the ability of the modern federal judge to meet this high standard of quality in federal adjudication. No one expects a federal judge to function without an adequate level of available tangible resources: sufficient courtroom and chambers space, competent administrative and research staff, a good library, and a comfortable salary that relieves the judge from personal financial pressure. Although salary levels have lagged—encouraging judges to engage in the limited teaching and publication activities that are their sole means of meeting such newly pressing financial obligations as the historically high mortgage expenses and college tuitions of the present decade—in the main, federal judges have received a generous allocation of tangible resources. It is unlikely that there is any further significant gain to be realized in the productivity of individual federal judges through increased levels of tangible resources,13 other than by redressing the pressure to earn supplemental income.14 ￼On a personal level, the most important resource available to the federal judge is time.15 Caseload pressures secondary to the indiscriminate federalization of state law are stealing time from federal judges, shrinking the increments available for each case. Federal judges have been forced to compensate by operating more like executives and less like judges. They cannot read their briefs as carefully as they would like, and they are driven to rely unduly on law clerks for research and writing that they would prefer to do themselves.16 If federal judges need more time to hear and decide each case, an obvious and easy solution is to spread the work by the appointment of more and more federal judges. Congress has been generous in the recent creation of new judgeships,17 and enlargement ￼of the federal judiciary is likely to continue to be the default response, albeit a more grudging one, to judicial concern over the caseload consequences of jurisdictional reallocation. Systemic effects: The hidden costs of adding more judges. Increasing the size of the federal judiciary creates institutional strains that reduce and must ultimately rule out its continued acceptability as a countermeasure to caseload growth. While the dilution of workload through the addition of judges is always incrementally attractive, in the long run it will cause the present system to collapse. I am not persuaded by arguments that the problem lies in the declining quality of the pool of lawyers willing to assume the federal bench18 or in the greater risk that, as the ranks of federal judges expand, there will be more frequent lapses of judgment by the president and the Senate in seating the mediocre on the federal bench.19 In my view, the diminished desirability of federal judicial office is more than offset by the rampant dissatisfaction of modern lawyers with the excessive commercialization of the practice of law. There is no shortage of sound judicial prospects will￼ing and able to serve, and no sign that the selection process—never the perfect meritocracy—is becoming less effective in screening out the unfit or undistinguished. Far more serious are other institutional effects of continuously compounding the number of federal judges. Collegiality among judges, consistency of decision, and coherence of doctrine across courts are all imperiled by the growth of federal courts to cattle-car proportions. Yet the ability of the system to tolerate proliferation of courts proportional to the proliferation of judges is limited, and while collapse is not imminent, it cannot be postponed indefinitely. Congress could restructure the federal trial and appellate courts without imperiling the core functions, but the limiting factor is the capacity of the Supreme Court to maintain overall uniformity in the administration and application of federal law. That Court is not only the crown but the crowning jewel of a 200-year-old system of the rule of law within a constitutional democracy, and any tinkering with its size or jurisdiction would raise the most serious questions of the future course of the nation.

### ---extra cards

#### Legitimacy key to court power

Gibson 14 [(James L. Gibson Sidney W. Souers Professor of Government Department of Political Science Professor of African and African American Studies Director, Program on Citizenship and Democratic Values Weidenbaum Center on the Economy, Government, and Public Policy Washington University in St. Louis; Michael J. Nelson Ph.D. Candidate, Department of Political Science Graduate Student Associate, Center for Empirical Research in the Law Washington University in St. Louis) “The Legitimacy of the U.S. Supreme Court: Conventional Wisdoms, and Recent Challenges Thereto” Feb 7, 2014] AT

The particular problem of the U.S. Supreme Court 3 is that it is heavily dependent upon legitimacy for its efficacy and survival. As all undergraduates learn, the federal courts have neither the power of the purse (carrots) nor the sword (sticks) and are therefore uncommonly dependent upon voluntary compliance from their constituents.4 Moreover, and perhaps even more important, the U.S. Supreme Court is particularly vulnerable to backlashes against its decisions because it often rules against the preferences of the majority, 5 and because, as an institution, it is unusually dependent upon the actions of other actors and institutions. The Supreme Court has little meaningful inherent or constitutional jurisdiction; instead, it gets its power to decide issues from ordinary legislation. What Congress giveth, Congress can taketh away. Even the fundamental structure of the institution – e.g., the number of justices on the Court – can change (and has throughout American history). Without legitimacy, the Supreme Court can be punished for the disagreeable decisions it makes, and/or those decisions can be ignored (for an important analysis of the Court/Congressional relations, see Clark 2011).

### Separation of power impact

#### Overrules kill perception of separation of power

Swift 95 (Kelley, COMMENT: HOPE V. PERALES: ABORTION RIGHTS UNDER THE NEW YORK STATE CONSTITUTION, Brooklyn Law Review, Winter 1995, 61 Brooklyn L. Rev. 1473, lexis)

One reason why at least a few members of the court of appeals may have been disinclined to expand the state constitutional right to abortion is that courts generally hesitate to interpret constitutions and do so in as few cases as possible. n322 The United States Supreme Court has employed a variety of devices to avoid answering difficult constitutional law questions, a desirable result in many instances. n323 Unlike the legislative and executive departments, the Court is not a representative branch of the public. It therefore cautiously proceeds to avoid the appearance that its decision was merely a surrender to political pressure. This type of politically motivated decision compromises the Court's integrity by making it indistinguishable from the other two branches although the federal judiciary is supposed to be removed from the political arena. n324 Overruling a particularly controversial precedent without the most compelling reason, for example, flies in the face of stare decisis and seriously threatens the Court's legitimacy.

#### **Separation of power solves unaccountable decisions to go to war – causes extinction**

Adler 96 - (David, professor of political science at Idaho State, The Constitution and Conduct of American Foreign Policy, p. 23-25)

The structure of shared powers in foreign relations serves to deter the abuse of power, misguided policies, irrational action, and unaccountable behavior. As a fundamental structural matter, the emphasis on joint policymaking permits the airing of sundry political, social, and economic values and concerns. In any event, the structure wisely ensures that the ultimate policies will not reflect merely the private preferences or the short-term political interests of the president. Of course this arrangement has come under fire in the postwar period on a number of policy grounds. Some critics have argued, for example, that fundamental political and technological changes in the character of international relations and the position of the United States in the world have rendered obsolete an eighteenth-century document designed for a peripheral, small state in the European system of diplomatic relations. Moreover, it has been asserted that quick action and a single, authoritative voice are necessary to deal with an increasingly complex, interdependent, and technologically linked world capable of massive destruction in a very short period of time. Extollers of presidential dominance have also contended that only the president has the qualitative information, the expertise, and the capacity to act with the necessary dispatch to conduct U.S. foreign policy. These policy arguments have been reviewed, and discredited, elsewhere; space limitations here permit only a brief commentary. Above all else, the implications of U.S. power and action in the twentieth century have brought about an even greater need for institutional accountability and collective judgment that existed 200 years ago. The devastating, incomprehensible destruction of nuclear war and the possible extermination of the human race demonstrate the need for joint participation, as opposed to the opinion of one person, in the decision to initiate war. Moreover, most of the disputes at stake between the executive and legislative branches in foreign affairs, including the issues discussed in this chapter, have virtually nothing to do with the need for rapid response to crisis. Rather, they are concerned only with routine policy formulation and execution, a classic example of the authority exercised under the separation of powers doctrine. But these functions have been fused by the executive branch and have become increasingly unilateral, secretive, insulated from public debate, and hence unaccountable. In the wake of Vietnam, Watergate, and the Iran-Contra scandal, unilateral executive behavior has become even more difficult to defend. Scholarly appraisals have exploded arguments about intrinsic executive expertise and wisdom on foreign affairs and the alleged superiority of information available to the president. Moreover, the inattentiveness of presidents to important details and the effects of “group-think” that have dramatized and exacerbated the relative inexperience of various presidents in international relations have also devalued the extollers arguments. Finally, foreign policies, like domestic policies, are a reflection of values. Against the strength of democratic principles, recent occupants of the White House have failed to demonstrate the superiority of their values in comparison to those of the American people and their representatives in Congress

### A2 Plan is Overturned

#### The aff must claim durable fiat throughout all speeches – they can’t argue the plan gets overturned in the 1AR.

#### Stable neg ground – arguing that the plan would go away delinks neg disads and NCs, which kills the neg’s ability to answer the aff.

#### Claiming that it gets overturned in the 1AR is especially bad – I can’t read new disads linking to the passing of the plan itself like politics – it literally severs the link to all neg ground – I’m bound to the strategy I had in the 1NC. This outweighs – even if non-durable fiat boosts aff ground, it literally decimates all neg ground so the skew is much worse – the aff at least has some offense if they have durable fiat – proven by the offense they read in the AC.

#### Contradictions – the AC assumes that the plan is durable and doesn’t get overturned. Saying it gets overturned in the 1AR is a contradiction, which A) means the neg can’t generate stable strategy – my 1NC strategy is based on the assumption of durable fiat that the AC has; and B) prevents the neg from answering that argument since it would just bolster the aff solvency

#### Independently this solves all theoretical justifications for non-durable fiat – if non-durable fiat is good, they should have clarified that in the AC, so the neg can form a stable strategy against non-durable fiat. Their interp justifies unlimited shiftiness that makes it impossible to be neg.

#### New 2NR Offense is terrible – the 2AR can easily dismiss it by making 1 response that I don’t have the ability to answer; also it restarts the debate giving the neg 6 minutes versus the aff’s 7.

1. *. See* Harry Kalven, Jr., *Privacy in Tort Law—Were Warren and Brandeis Wrong?*, Law & Contemp. Probs., Winter 1966, at 326, 335–38 (noting a substantial growth in the newsworthiness exception since *The Right of Privacy* was published); Rodney A. Smolla, *Privacy and the First Amendment Right to Gather News*, 67 Geo. Wash. L. Rev. 1097, 1101 (1999) (arguing that the privacy tort has little relevance to law practice today); Diane L. Zimmerman, *Requiem for a Heavyweight: A Farewell to Warren and Brandeis’s Privacy Tort*, 68 Cornell L. Rev. 291, 293 (1983) (“[Privacy tort law] cannot coexist with constitutional protections for freedom of speech and press.”). *See generally* David A. Anderson, *The Failure of American Privacy Law*, in Protecting Privacy 139 (Basil S. Markesinis ed., 1999). *But cf.* James Gordley, *When Is the Use of Foreign Law Possible? A Hard Case: The Protection of Privacy in Europe and the United States*, 67 La. L. Rev. 1073, 1099–100 (2007) (arguing that the reluctance of the Supreme Court to delineate public and non-public value in invasion of privacy cases led to overexpansion of free speech at the expense of legitimate privacy interests). [↑](#footnote-ref-1)
2. . Snyder v. Phelps, 131 S. Ct. 1207, 1219 (2011) (quoting Boos v. Barry, 485 U.S. 312, 322 (1988)). [↑](#footnote-ref-2)
3. . 420 U.S. 469, 493–96 (1975) (holding that the state cannot impose liability on a media outlet for publishing information found in a public record). [↑](#footnote-ref-3)
4. . 443 U.S. 97, 105–06 (1979) (holding that there is no liability for publishing information lawfully acquired and in the public interest unless state interest is “of the highest order”). [↑](#footnote-ref-4)
5. . 491 U.S. 524, 541 (1989) (“[W]here a newspaper publishes truthful information which it has lawfully obtained, punishment may lawfully be imposed, if at all, only when narrowly tailored to a state interest of the highest order . . . .”). [↑](#footnote-ref-5)
6. *. Cox*, 420 U.S. at 472–74. [↑](#footnote-ref-6)
7. *. Id.* at 491. [↑](#footnote-ref-7)
8. *. See id.* at 487–97. [↑](#footnote-ref-8)
9. *. Id.* at 494–95. [↑](#footnote-ref-9)
10. *. Id.* at 491. [↑](#footnote-ref-10)
11. *. See* 430 U.S. 308, 311–12 (1977). [↑](#footnote-ref-11)
12. . Smith v. Daily Mail Publ’g Co., 443 U.S. 97, 103 (1979). [↑](#footnote-ref-12)
13. *. Id.* [↑](#footnote-ref-13)
14. *.* Fla. Star v. B.J.F., 491 U.S. 524, 541 (1989) (emphasis added). The Court cabined this holding slightly: “We do not hold that truthful publication is automatically constitutionally protected, or that there is no zone of personal privacy within which the State may protect the individual from intrusion by the press . . . .” *Id.* [↑](#footnote-ref-14)
15. *. Id.* at 550 (White, J., dissenting). [↑](#footnote-ref-15)
16. *. See* Franz Werro, *The Right to Inform v. the Right to Be Forgotten: A Transatlantic Clash*, Georgetown University Center for Transnational Legal Studies Colloquium, May 2009, at 285, 296, *available at* http://ssrn.com/abstract=1401357 (“After *Florida Star*, it appears there is little the states can do to prevent the media from disseminating sensitive information so long as that information is legally acquired . . . evinc[ing] a clear preference for broad First Amendment protections of the press over the privacy interests of individuals.”). [↑](#footnote-ref-16)
17. . Jacqueline R. Rolfs, The Florida Star v. B.J.F*.: The Beginning of the End for the Tort of Public Disclosure*, 1990 Wis. L. Rev. 1107, 1127–28 (1990). [↑](#footnote-ref-17)